

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,)	
)	Opposition No. 91175319
Opposer,)	
)	Serial No. 78/728,786
v.)	
)	Filed: October 7, 2005
DAVINCI RADIOLOGY)	
ASSOCIATES, P.L.)	Published: December 19, 2006
)	
Applicant,)	Trademark: DAVINCI DIAGNOSTIC IMAGING & DESIGN

MOTION FOR ORDER SETTING ASIDE DEFAULT

DaVinci Radiology Associates, P.L. ("DRA") moves for entry of an order setting aside the default entered against it and as good cause pursuant to Fed. R. Civ. P. 55 (c) shows the following:

1. The answer in this case was due on March 6, 2007.
2. On February 19, 2007 Intuitive Surgical agreed to give DRA until April 5, 2007 to file an answer and on March 30, 2007 this time to file an answer was extended by Intuitive Surgical to May 4, 2007.
3. As a result of a calendaring error, the undersigned counsel for DRA did not file a motion to extend the time for filing an answer until after the original due date.
4. A Stipulation extending the time to answer in the form attached hereto was submitted to counsel for Intuitive Surgical on April 6, 2007; however, counsel was not available to sign the stipulation until April 11, 2007.

5. Counsel for Intuitive Surgical indicated that the Stipulation would be signed and that a motion for an order extending the time for the filing of an answer would not be opposed.

6. Prior to the entry of the default, DRA served its Motion for Order Approving Stipulation to Extend Time for Filing Response to Notice of Opposition on April 6, 2007 and mailed it to the Trademark Trial and Appeal Board for filing the same day. A copy of the Motion and the signed Stipulation are attached hereto as Exhibit A.


7. There will be no prejudice to Intuitive Surgical and it will serve the ends of justice to permit the case to be determined on its merits.

8. DRA asserts that it has a meritorious defense to the Opposition in that DRA is in the business of providing diagnostic imaging services and does not manufacture or sell robotic surgical equipment, components or services.

WHEREFORE, DRA requests entry of an Order setting aside the default and, pursuant to the stipulation between the parties, extending the time for DRA to file an answer to May 4, 2007.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Motion and that the allegations therein are true.


Kirk Friedland, Attorney for DRA

AMENDED CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Motion for Order Setting Aside Default was sent for filing with the Trademark Trial and Appeal Board by Federal Express priority overnight on April 13, 2007; however it appears from a review of the online record of filings that the Motion was not received by TTAB. This duplicate of the Motion is being sent for filing to TTAB via Federal Express and a true and complete copy of the foregoing has been served on Michelle D. Kahn, by mailing said copy on April 27, 2007, via First Class Mail, postage prepaid to: Michelle D. Kahn, SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP, Four Embarcadero Center, 17th Floor, San Francisco, CA 94111.

A handwritten signature in black ink, appearing to read "Kirk Friedland", written over a horizontal line.

Kirk Friedland
505 S. Flagler Dr., Ste. 1330
West Palm Beach, FL 33401
Phone: (561) 655-8200
Fax: (561) 655-1389
Attorney for Applicant DRA

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**MOTION FOR ORDER APPROVING STIPULATION TO EXTEND TIME FOR
FILING RESPONSE TO NOTICE OF OPPOSITION**

DaVinci Radiology Associates, P.L. ("DRA") moves for entry of an order approving a stipulation with Intuitive Surgical, Inc. ("Intuitive Surgical") extending the time for DRA to file a response to the Notice of Opposition until May 4, 2007 and states:

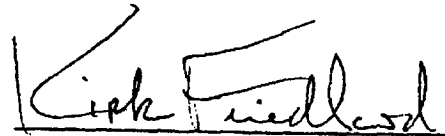
1. Intuitive Surgical filed its Notice of Opposition on January 22, 2007.
2. On February 19, 2007 Intuitive Surgical agreed to give DRA until April 5, 2007 to file a response to its Opposition and on March 30, 2007 this date was extended by Intuitive Surgical to May 4, 2007.
3. A Stipulation in the form attached hereto was submitted to counsel for Intuitive Surgical on April 6, 2007; however, counsel will not be available to sign the stipulation until she returns to the office on April 11, 2007.

4. Counsel for Intuitive Surgical has indicated that the Stipulation will be signed and that this motion will not be opposed.

WHEREFORE, DRA requests entry of an Order extending the time for the filing of a response to the Opposition to May 4, 2007.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Stipulation has been served on Michelle D. Kahn, by mailing said copy on April 6, 2007, via First Class Mail, postage prepaid to: Michelle D. Kahn, SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP, Four Embarcadero Center, 17th Floor, San Francisco, CA 94111.

A handwritten signature in black ink, appearing to read "Kirk Friedland", written over a horizontal line.

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Attorney for Applicant

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)	IMAGING & DESIGN
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**SUPPLEMENT TO MOTION FOR ORDER
SETTING ASIDE DEFAULT**

DaVinci Radiology Associates, P.L. ("DRA") supplements its Motion for Entry of an Order Setting Aside the Default and states:

1. Attached hereto is an Answer to Notice of Opposition which DRA intends to file in the event that the default is set aside.

WHEREFORE DRA requests entry of an order setting aside the default and deeming the attached Answer to Notice of Opposition filed as of the date of the entry of the order.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on Michelle D. Kahn, by mailing said copy on April 27, 2007, via First Class Mail, postage prepaid to: Michelle D. Kahn, SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP, Four Embarcadero Center, 17th Floor, San Francisco, CA. 94111.



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ANSWER TO NOTICE OF OPPOSITION

Applicant, DaVinci Radiology Associates, P.L., (“DRA”) in answer to the Notice of Opposition denies that Intuitive Surgical, Inc. will be damaged by registration of Application Serial No. 78/728,786 and, in response to said Notice of Opposition, states as follows:

Applicant denies the allegation in the preamble that Opposer will be damaged by registration of the mark DAVINCI DIAGNOSTIC IMAGING & Design, Serial No. 78/728,786.

1. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and therefore denies the same.
3. Applicant admits that the U.S.P.T.O. Trademark Electronic Search System (TESS) indicates that Opposer is the owner of Registration No. 2,628,871, Application Serial No. 75/982,190

filed on March 19, 1999 for DA VINCI. in connection with “computerized surgical manipulation system” and components thereof. Applicant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 3 of the Notice of Opposition and therefore denies the same.

4. Applicant admits that the U.S.P.T.O. Trademark Electronic Search System (TESS) indicates that Opposer is the owner of Application Serial No. 76/665,748 filed on September 8, 2006 for DA VINCI S HD SURGICAL SYSTEM (Stylized) for use in connection with “computerized surgical manipulation system” and components thereof. Applicant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 4 of the Notice of Opposition and therefore denies the same.
5. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition and therefore denies the same.
6. Applicant denies the allegations set forth in Paragraph 6 of the Notice of Opposition.
7. Applicant admits the allegations set forth in Paragraph 7 of the Notice of Opposition.
8. Applicant admits the allegations set forth in Paragraph 8 of the Notice of Opposition.
9. Applicant denies the allegations set forth in Paragraph 9 of the Notice of Opposition.
10. Applicant admits the allegations set forth in Paragraph 10 of the Notice of Opposition.
11. Applicant denies the allegations set forth in Paragraph 11 of the Notice of Opposition.
12. Applicant denies the allegations set forth in Paragraph 12 of the Notice of Opposition.
13. Applicant denies the allegations set forth in Paragraph 13 of the Notice of Opposition.

AFFIRMATIVE DEFENSES AND GENERAL DENIAL

14. To the extent that any of Opposer's allegations are not specifically addressed herein, they are denied.

FIRST AFFIRMATIVE DEFENSE

15. Applicant is informed and believes, and therefore alleges, that the facts set forth in the Notice of Opposition are insufficient to justify denying registration of Applicant's mark.

SECOND AFFIRMATIVE DEFENSE

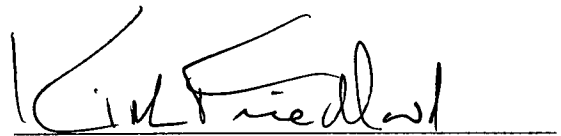
16. There is no likelihood of confusion because Applicant's mark and Opposer's marks are not confusingly similar and the diagnostic imaging services identified in the application for Applicant's mark are not confusingly similar to the surgical system and components identified in the applications for Opposer's marks.

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed and the application Serial No. 78/728,786 proceed to registration.

Respectfully submitted,

DaVinci Radiology Associates, P.L.

Date: _____



Kirk Friedland, Esq.
Kirk Friedland Law Office
Attorney for Applicant
505 S. Flagler Dr. Ste 1330
West Palm Beach, FL 33401

CERTIFICATE OF SERVICE

I hereby certify that I have this date served counsel for all parties to this action with a copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** by depositing the same with the U.S. Postal Service in a sealed envelope as first class mail, postage prepaid, addressed to:

Michelle D. Kahn, Esq.
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
Attorneys for Opposer
Four Embarcadero Center
17th Floor
San Francisco, CA 94111

Dated: _____

Kirk Friedland, Esq.
Kirk Friedland Law Office
Attorney for Applicant
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West Palm Beach, FL 33401